

11/5/77

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THE PRESIDENT HAS SEEN:

THE WHITE HOUSE
WASHINGTON

2

SATURDAY - NOV. 5, 1977
12:40 P.M.

MR. PRESIDENT

BOB THOMSON RETURNED YOUR
CALL.

FRAN

HE REPORTS THAT HE HAS COMPLETED
ALL CONGRESSIONAL NOTIFICATION
CALLS.

**Electrostatic Copy Made
for Preservation Purposes**

THE WHITE HOUSE
WASHINGTON

Mr. President:

The attached Proclamation, "Emergency Medical Services Week, 1977", was requested by the Department of Transportation. There is no statutory basis for its issuance, although similar ones were issued in 1974-6.

Jim Fallows has reviewed the attached text.

Rick (wds)

*Susan
Holt*

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THE WHITE HOUSE
WASHINGTON
November 5, 1977

Frank Moore
Tim Kraft

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Rick Hutcheson

RE: MEETING WITH REP. BENNETT
TO DISCUSS STOCKPILE BILL

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THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

CONGRESSIONAL TELEPHONE CALL

TO: Rep Charles Bennett

DATE: By November 4, 1977

RECOMMENDED BY: Bill Cable *Bill*

PURPOSE: To discuss the Congressman's Stockpile Bill.

BACKGROUND: Rep. Bennett has been requesting an appointment to discuss his bill, H.R. 4895, which "amends the Strategic and Critical Materials Stock Piling Act." Because of his lack of support for Administration sponsored bills, we have not recommended that an appointment be granted. Bennett's latest letter, dated October 20, states that he feels he has been "very poorly treated in this matter." Bennett has received several letters from Randy Jayne of the Office of Management and Budget, stating that the Administration is in favor of part of the Bill, but that we do not agree with the provision which ties up money received from sales of obsolete inventories. Bennett refuses to believe that we will not support his Bill in its entirety and believes that Jayne is only citing OMB's objection and not that Jayne has indeed given him the Administration's position.

In view of the fact that Bennett is number two on the Armed Services Committee and is likely to become Chairman in the relatively near future, we don't want to create long term problems.

TOPICS OF
DISCUSSION:

1. We agree with Bennett regarding the importance of the Strategic Materials Stockpile, and endorse along with him a large stockpile based on a major two-front, three year war contingency; (FYI: Bennett remains very suspicious that we will try, like the Nixon Administration, to "sell off" the stockpile. Our letters and meetings have in no way assuaged him.)

2. We disagree with the Congressman's provision in his Bill to tie up any money (potentially billions of dollars) received from sales of obsolete stockpile inventories and allow those

*Set up
mfg
J*

funds to be used fonly for future stockpile purchases. Such a budget funding restriction is simply not consistent with sound management principles, restricts both the President's and Congress' flexibility as to use of Treasury receipts, and is in our view unnecessary to "protect" the future funds available for stockpile materials acquisition, given our Administration's commitment to a large stockpile.

Approved by Frank Moore: FM.

Date of submission: November 2, 1977



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 31, 1977

MEMORANDUM FOR: BILL CABLE
Deputy Assistant For Congressional Liaison

FROM: Randy Jayne
Associate Director for National Security and
International Affairs

SUBJECT: Congressman Bennett's Requests for Meetings with
the President

I started to write you a suggested response to Charles Bennett's requests, but I have stopped short in light of his language in the October 20 letter to Stu Eizenstat (attached). When the man who will soon be the Chairman of the HASC thinks he has been "very poorly treated", we need to try to do something. So long as we let the President know the substance of our opposition to the "fund" portion of Bennett's Stockpile Bill, it may be best to allow either a brief meeting or at least a Presidential phone call to Bennett. I worry that we may create real long term problems by seeming to give Bennett the brushoff on this minor (to us, not him) issue.

The message which the President should convey to Charlie on the Stockpile Bill is simple:

- (a) We agree with Bennett regarding the importance of the Strategic Materials Stockpile, and endorse along with him a large stockpile based on a major two-front, three year war contingency; (FYI: Bennett remains very suspicious that we will try, like the Nixon Administration, to "sell off" the stockpile. Our letters and meetings have in no way assuaged him).
- (b) We disagree with the Congressman's provision in his Bill to tie up any money (potentially billions of dollars) received from sales of obsolete stockpile inventories and allow those funds to be used only for future stockpile purchases. Such a budget funding restriction is simply not consistent with sound management principles, restricts both the President's and Congress' flexibility as to use of Treasury receipts, and is in our view unnecessary to "protect" the future funds available for stockpile materials acquisition, given our Administration's commitment to a large stockpile.

I would recommend that Frank have the President call Bennett and be prepared to make these points. It seems better to spend ten minutes now to hear Bennett out than to antagonize him even further with another negative letter.

Attachments: (My letter to Bennett--10/18)
(His response--10/20)
(His letter to Stu--10/20)



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

October 18, 1977

Honorable Charles E. Bennett
House of Representatives
Washington, D.C. 20515

Dear Mr. Bennett:

Since our meeting on September 21, the President has announced his decisions on stockpile guidance. As you know, the President has reaffirmed major elements of the 1976 policy, namely that stockpile planning will continue to be based on a two-front, three-year war contingency.

We now wish to move ahead with needed stockpile modernization. The Federal Preparedness Agency will submit a 1978 supplemental request as well as a 1979 budget request that will recommend both the sale of excess materials and the acquisition of new materials. We of course need and hope to have your support for these requests.

Regarding your legislative proposal to establish a special fund for the acquisition of new materials, we still do not believe that such a fund is needed. Our new stockpile policy clearly reflects the President's commitment to the use of the stockpile only for national security purposes. Budget requests will be formulated on the basis of this principle. We believe, therefore, that no special fund is needed to prevent the misuse of the stockpile.

In addition, the establishment of such a special fund could set a precedent which, if followed, could significantly reduce the President's budget flexibility. I am sure you can understand our concerns on this matter. In fact, this is in keeping with a broad general principle of budgeting and financial management - that no special funds shall be established in the absence of special and compelling reasons. As we both know, certain funds of this type do exist. However, we wish to reduce rather than proliferate such arrangements.

In conclusion, I think that your objectives for the stockpile and those of this Administration are very much the same. We have certainly benefitted from your advice and we look forward to working with you in establishing a strategic stockpile that better serves our security interests.

Sincerely,

Edward R. Jayne II
Associate Director for
National Security and
International Affairs

cc: Official File - NSD
Director's Chron

DO Records

Mr. Cutter

Mr. Harris

Mr. Jayne

Mr. Sitrin

Eizenstat

Brzezinski

Moore

CHARLES E. BENNETT
MEMBER
30 DISTRICT, FLORIDA

ARMED SERVICES COMMITTEE

CHAIRMAN OF SEAPOWERS
SUBCOMMITTEE

JACKSONVILLE OFFICE:
352 FEDERAL BUILDING 32202
TELEPHONE 904-791-2587

JOHN W. POLLARD, JR.
BRENDA DONALDSON

Congress of the United States
House of Representatives
Washington, D.C. 20515

October 20, 1977

STEPHEN R. JOHNSON
ADMINISTRATIVE ASSISTANT

JOHN W. FARLEY
LEGISLATIVE ASSISTANT

SHARON H. SIEGEL
LAURA M. BISHOP
KAREN YEGEL
BARBARA LYLE
SARAH J. SCOTT
SECRETARIES

Mr. Edward R. Jayne II, Associate Director
National Security and International Affairs
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Jayne:

Thank you for your October 18 letter. I note that you hope to have my cooperation in bills in the stockpile area and I assume that you would be willing to be cooperative with me in being open-minded about the stockpile legislation I have introduced. The third paragraph of your letter indicates that the new stockpile policy clearly reflects the President's commitment to the use of the stockpile only for national security purposes. That could be said as well for all of the tremendous abuses which occurred in the stockpile requests from the Administration in the past. Their announced policies were not followed in what they actually asked for and I feel certain that you would agree with me that this sort of thing should have a stop put to it. The bill that I have introduced, which has passed the House, would put a stop to that. I will be glad to talk with you at any time on the matter or on any matter that you may have that you feel is proper to bring up.

With kindest regards, I am

Sincerely,

Charles E. Bennett

CEB/b1

CHARLES E. BENNETT
MEMBER
20 DISTRICT, FLORIDA

ARMED SERVICES COMMITTEE
CHAIRMAN OF SEAPOWER
SUBCOMMITTEE

JACKSONVILLE OFFICE:
352 FEDERAL BUILDING 32202
TELEPHONE 904-791-2387

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KAREN YEGELLA
BARBARA LYLE
SARAH J. SCOTT
SECRETARIES

Congress of the United States
House of Representatives

Washington, D.C. 20515

October 20, 1977

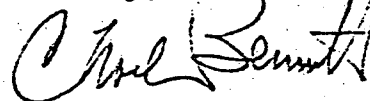
Mr. Stuart E. Eizenstat, Assistant
to the President for Domestic
Affairs and Policy
The White House
Washington, D.C. 20500

Dear Mr. Eizenstat:

Thank you for your October 19 letter. You refer to Mr. Jayne's letter and I enclose herein a copy of a letter which I wrote him in response to it. I also enclose herein a copy of a letter I wrote to the President asking for an appointment to see him. I attempted to handle this matter through you but was unable to do so and therefore I am writing again a specific letter without any details because the previous letters when I asked for such an appointment were never answered.

With kindest regards, I am

Sincerely,



Charles E. Bennett

CEB/bl
Enclosures

*I think I have
been very poorly
treated in this matter -*

*still unable
to schedule a
meeting*

*PLS call
his office
to determine his
request for appt
and ask that
he make
request
through
our
office
BR*

CHARLES E. BENNETT

MEMBER
30 DISTRICT, FLORIDA

ARMED SERVICES COMMITTEE

CHAIRMAN OF SEAPOWER
SUBCOMMITTEE

JACKSONVILLE OFFICE:
352 FEDERAL BUILDING 32202
TELEPHONE 904-791-2587

JOHN W. POLLARD, JR.
BRENDA DONALDSON

Congress of the United States

House of Representatives

Washington, D.C. 20515

October 20, 1977

STEPHEN R. JOHNSON
ADMINISTRATIVE ASSISTANT

JOHN W. FARLEY
LEGISLATIVE ASSISTANT

SHARON H. SIEGEL
LAURA M. BISHOP
KAREN YEGELLA
BARBARA LYLE
SARAH J. SCOTT
SECRETARIES

Honorable Jimmy Carter
President of the United States
The White House
Washington, D.C. 20500

FV
CONGRESSIONAL
LIAISON

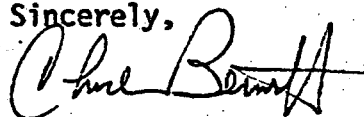
OCT 24 1977

Dear Mr. President:

I have attempted through oral inputs and some writing to have an appointment to see you briefly concerning possible approval by the Administration of my bill on the national stockpiles, a copy of which I enclose herein, which has passed the House and has had hearings already in the Senate. Technically the Administration seems to oppose the legislation but I think there is no real reason for this and I would like to get the legislation enacted so that we can get on with other stockpile matters which are beginning to pile up. I would appreciate it very much if you could either allow me to talk with you about the need for Administration approval of this bill or, if you can handle the matter without the necessity of a conference, you could write to Senator Gary Hart, who chairs the subcommittee, and express approval and urge passage of the legislation. In other words, if you can write such a letter there would be no necessity for me to occupy your time in a conference but in the event that inputs to you are still negative about this legislation then I would like to have an opportunity to talk with you personally about it because I am convinced that it is in the public interest.

With kindest regards, I am

Sincerely,



Charles E. Bennett

CEB/bl
Enclosure

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for Preservation Purposes

(10) WH staff - expand - Strasser
(Clifford?)

Dyrd

THE WHITE HOUSE
WASHINGTON

11-5-77

- ① Don't pay energy price
on oil cost
- ② All will have to give
- ③ Allow flexibility to
house & senate
Jackson vs Long
- ④ Vice Regent votes
Long will know
- ⑤ Tax reform - simplify
- ⑥ Panama - Pres & public
- ⑦ Mid East - tough
- ⑧ SALT = follow Nunn
- ⑨ 1978 - Energy - Expt - Tax &
Steel =
- ⑩ Welfare reform - no
political mileage
- ⑪ See Baker - use him
- ⑫ Refuse Lance somewhere

THE WHITE HOUSE

WASHINGTON

Date: October 31, 1977

SAT

MEMORANDUM

FOR ACTION:

Stu Eizenstat
Hamilton Jordan
Bob Lipshutz
Frank Moore (Les Francis)
Jody Powell
Jack Watson

Jim Fallows

FROM: Rick Hutcheson, Staff Secretary

FOR INFORMATION:

The Vice President
Zbig Brzezinski
Secretary Schlesinger

SUBJECT: Enrolled Bill S. 1811 - DoE Authorization Act of 1978 --
Civilian Applications

SIGNED

11/5/77

YOUR RESPONSE MUST BE DELIVERED

TO *BERT CARP* BY:

TIME: 12:00 Noon

DAY: Wednesday

DATE: November 2, 1977

ACTION REQUESTED:

 Z Your comments

Other:

STAFF RESPONSE:

 I concur.

 No comment.

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

Date: October 31, 1977

MEMORANDUM

FOR ACTION:

Stu Eizenstat
Hamilton Jordan
Bob Lipshutz
Frank Moore (Les Francis)
Jody Powell
Jack Watson

FOR INFORMATION:

The Vice President
Zbig Brzezinski
Secretary Schlesinger

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Enrolled Bill S. 1811 - DoE Authorization Act of 1978 --
Civilian ApplicationsYOUR RESPONSE MUST BE DELIVERED
TO BERT CARP BY:

TIME: 12:00 Noon

DAY: Wednesday

DATE: November 2, 1977

ACTION REQUESTED:

2 Your comments
Other:

STAFF RESPONSE:

☒ I concur. ☐ No comment.
Please note other comments below:

*I concur with recommendation
for a veto for two reasons:
(1) Authorization for Civilian
Breeder Reactor.
(2) Congressional Veto provisions.*

RJ

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

Send
 Tim Free a
 copy of our 73
 memo
 He may wish
 to pick
 up tonight

THE WHITE HOUSE
 WASHINGTON

ACTION
 FYI

	✓	MONDALE
		COSTANZA
✓		EIZENSTAT
✓		JORDAN
✓		LIPSHUTZ
✓		MOORE
✓		POWELL
✓		WATSON
		LANCE
		SCHULTZE

✓	FOR STAFFING
	FOR INFORMATION
	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to
 Carp/Huron within
 48 hours; due to
 Staff Secretary
 next day

		ARAGON
		BOURNE
✓		BRZEZINSKI
		BUTLER
		CARP
		H. CARTER
		CLOUGH
		FALLOWS
		FIRST LADY
		HARDEN
		HUTCHESON
		JAGODA
		KING

		KRAFT
		LINDER
		MITCHELL
		MOE
		PETERSON
		PETTIGREW
		POSTON
		PRESS
✓		SCHLESINGER
		SCHNEIDERS
		STRAUSS
		VOORDE
		WARREN

To: Rick Hutcheson
for his files.

Shor 77

Roque

Last Day for action - Saturday, November 5, 1977

THE WHITE HOUSE

WASHINGTON

November 3, 1977

MEMORANDUM FOR THE PRESIDENT

FROM:

STU EIZENSTAT *Shu*
KITTY SCHIRMER

SUBJECT:

Enrolled Bill S. 1811 -- Department of Energy Authorization Act of 1978 -- and its Relationship to the Clinch River Breeder Reactor and the FY 1978 Supplemental Appropriation

This memorandum deviates from the usual enrolled bill memorandum procedure. The attached OMB memorandum provides an analysis of the major features of the ERDA authorization. Although it is long, we recommend that you read it. This memo deals with the Clinch River Breeder Reactor and its relationship to the Supplemental Appropriations legislation which has now cleared both Houses and is awaiting Conference. Decisions on the two bills are inextricably related and must be considered jointly. The last day for action of the Authorization is November 5. The Supplemental is not likely to come out of Conference before the end of November.

The decisions involved on these bills are extremely complex, both substantively and politically. While this memo will attempt to analyze the options available as thoroughly as possible, we strongly recommend that, before making a decision, you meet with Frank Moore, Jim McIntyre, Secretary Schlesinger, Dr. Brzezinski, Joe Nye, Hamilton, and ourselves. We also recommend that, whatever your decision, you discuss it with the Speaker and let Frank notify interested members of Congress before announcing it.

BACKGROUND

1. The ERDA Authorization Bill - S. 1811

S. 1811 authorizes FY 1978 appropriations for the majority of the Department of Energy's fossil, solar, nuclear, conservation, and environmental programs. It includes \$80 million for the Clinch River Breeder Reactor Project (CRBR).

With the exception of the CRBR and a few non-essential new programs, all on-going DOE programs subject to this authorization have been funded without regard to enactment of authorizing legislation. FY 1978 appropriations for these programs were made in two appropriations bills (Public Works and Interior) which you signed and none of those funds are contingent upon enactment of authorizing legislation.

S. 1811 authorizes \$80 million for further design, procurement, and construction of the CRBR. The bill also expressly states that:

- nothing in the law originally authorizing the CRBR shall be construed as permitting the Secretary of Energy to propose or proceed with cancellation or termination of the project;
- none of the funds appropriated under the original CRBR Act, or under this bill shall be used directly or indirectly to cancel or terminate or plan the cancellation or termination of the CRBR;
- the CRBR shall be located as provided under existing law, and "shall be designed, constructed and operated in accordance with the existing project arrangements, objectives, and schedules."

In addition to this language, the Conference Report states that it is the intent of the Conferees that "... the CRBR project shall be pursued in a vigorous manner to maintain the viability of all project arrangements, objectives and schedules (prior to April 1977) . . . [and] . . . that the Administration and all other relevant Federal agencies take all necessary actions with regard to the licensing process for the CRBR project to assure the earliest possible decisions on a limited work authorization and construction permit." The Conference report further states that "the Conferees believe that it is the intent of Congress that funds appropriated for the CRBR project shall be deemed to be deferred or rescinded . . . if such funds are withheld from use or used to cancel or terminate the project . . . "

It is clear, however, that no actual construction can begin in FY 1978 because of the length of time required to obtain the necessary permits from the Nuclear Regulatory Commission, and because \$80 million is insufficient to fund such activity. Licensing and procurement of components for the reactor would continue on the original (pre-April 1977) schedule, however.

2. The FY 1978 Supplemental Appropriation - H.R. 9375

This bill, which has passed both the House and Senate and is now in Conference, appropriates funds for the following items:

- . \$80 million for the CRBR without regard to enactment of authorization legislation;
- . recission of \$462 million for the 1977 B-1 bomber;
- . \$4.5 billion for EPA sewage treatment construction grants (eight states are now out of funds, and up to 30 could run out before Congress can act on appropriations next year);
- . \$1.4 billion for SBA disaster relief loans;
- . funds for the Strategic Petroleum Reserve;
- . funds for acceleration of the cruise missile program;
- . funds to initiate implementation of the National Energy Plan, and other DoE purposes;
- . restoration of \$152 million for F-14 aircraft previously cut from your budget request;
- . miscellaneous funds for other agency programs.

Of these items, the most important (and that on which the vote was the closest) is the B-1 recission. The disaster relief funding is also critical, with the EPA construction grant program running a close second in terms of political interest and substantive impact.

3. Work which would occur on the CRBR if \$80 million in expenditures are required in FY 1978:

- . continuation of planning and design for the construction phase;
- . fabrication of plant components under existing contracts, with some new supporting contracts;

- . fabrication of prototypes;
- . continuation of procedures before the Nuclear Regulatory Commission to obtain "limited work authorization" (for site preparation) and construction permit.

All employees (about 4,600) currently working on activities related to the CRBR would remain. Utilities, which have pledged to bear \$250 million of the cost of the CRBR, would pay another installment of approximately \$33 million in FY 1978. If the project were eventually terminated, the U.S. would be potentially liable for reimbursing these private investors. Actual FY 1978 outlays on the CRBR would be \$145 million. Prior year unobligated balances of \$87 million would be expended in FY 1978 in addition to the \$80 million contained in the authorization. Under our proposal to terminate the CRBR, these unobligated balances would be used to offset the termination costs. Should the project be terminated next year, we would have to seek new appropriations of about \$150 million (\$250 if private investors must be reimbursed).

The momentum of the project would be carried forward with little delay. (Site preparation, which under the House version of the bill would have begun in FY 1978 would be delayed by 2 to 3 months.) While continuing this momentum may make it harder to stop the CRBR, an argument can also be made that we will fare better on the Hill with more time to make our case.

THE OPTIONS

Four options are available in dealing with these two bills:

1. Sign both the ERDA authorization and the supplemental appropriation, with a strong anti-CRBR statement, and pledge to fight again next year.
2. Veto both the ERDA authorization and the supplemental.
3. Veto the ERDA authorization, sign the supplemental appropriation and indicate intent to use all available means to stop CRBR funding.
4. Veto the ERDA authorization on symbolic grounds, sign the supplemental, refrain from trying to terminate the CRBR now, pledge to fight the CRBR again next year.

We have spoken personally to about a dozen Congressmen who helped us on both the CRBR and the B-1. They are almost evenly divided on which strategy to follow, with no clear consensus.

ANALYSIS

1. Sign both the Authorization and the Appropriation

In the immediate term, this is the lowest risk option. It avoids a veto during your first term, a goal which the Speaker has uppermost in his mind. It avoids prolonging the CRBR issue, and cleans the slate for a new fight next year without the risks of a bitter fight over either bill this year. It does not risk the B-1 recission, nor the other funds which are important to appropriate before Congress goes home. Finally, it ensures that neither of these bills will interfere with or divert our effort on the National Energy Plan.

Some members of Congress with whom we have spoken have urged that whatever we decide, do the same on both the authorization and the appropriation. This option comports with the "sign both or veto both" advice. Under this option we can still try for a recission or deferral of CRBR funds although neither of these efforts have much chance of succeeding.

On the other hand, such a move will disappoint some of our Congressional and other supporters. It guarantees that we must spend \$80 million on the CRBR this year, and press forward with all haste toward preparing the project for construction and licensing. The State Department and the NSC state that a failure to continue to press against the CRBR, at least without a good fight, will damage our non-proliferation policies abroad, and further weaken our credibility on this issue. State does point out, however, that an override of a veto would be more damaging to our overall foreign policy objectives than signing the legislation. Recent checks with members of Congress as well as prior votes on the CRBR issue would indicate that we could probably sustain a veto on the authorization bill should an override vote be attempted. (This would probably not be the case on the supplemental appropriation.)

Finally, signing both bills could further feed claims that you ask members of Congress to go out on a limb for your programs, but that you do not later back them up.

2. Veto both the Authorization and the Supplemental

This is clearly the boldest stroke which you could take. It is also most risky, not only in terms of the CRBR, but on the B-1 and on the possibility of an override. It would anger the Speaker, and would call on our B-1 supporters (as well as CRBR supporters) to go out on the line again for both programs. There are a number of programs in the supplemental (aside from the CRBR and the B-1) which are politically important -- even to those who voted with us on both the CRBR and the B-1. A vote on sustaining a veto would be close, and probably cannot be won. (We are working with Frank Moore to get a firmer reading on this point.)

An additional consideration involved in this option is its relationship with the National Energy Plan. An override attempt on a supplemental veto would not likely occur until all members of Congress are back in town for consideration of the Conference Reports on the National Energy Plan. Acceptance of Conference Reports in both Houses will be difficult enough without having an extra and very volatile issue introduced in the middle of the debates. Certainly, working both of these issues at the same time will pose substantial problems for Frank and his staff by putting them in the uncomfortable position of having to ask members for "must" votes on two difficult questions. Should you decide to veto both bills, this is a point which should be thoroughly and candidly discussed beforehand with the Speaker and Senator Byrd.

From the standpoint of CRBR policy, however, this option is clearly the most consistent with and supportive of your domestic and foreign policy positions. Some, but by no means a majority, of the Congressmen with whom we have consulted believe that you must veto both the supplemental and the authorization if you want to take the CRBR on again this session. They argue that vetoing only the authorization would be widely perceived as purely symbolic -- although there are some policy implications of such a veto, however subtle they might now appear. Clearly, a veto of both bills would signal the high priority which you attach to the CRBR termination, and would shore up our non-proliferation supporters here and abroad (some of whom believe that recent decisions on Tokai, spent fuel and other issues signify an incremental backing down from our original non-proliferation policies.)

3. Veto the Authorization, sign the Supplemental and press all options, including a legal case for terminating the CRBR.

Under this option, a statement would be made in the veto message that the Administration intends to use every available tool to fight any further funding of the CRBR, and that a veto is necessary to avoid enactment of an express statutory prohibition on doing so.

In addition to the usual rescission and deferral possibilities, a case can be made that we can use the \$80 appropriated in the Supplemental for termination of the CRBR since this is not expressly prohibited in law. The ground for such a case is a revision in the so-called "basis of arrangement" which ERDA transmitted to the Congress last May. This submission changed the scope of the CRBR project from full design, construction and operation to completion only of the systems design. ERDA, on behalf of the Administration, has taken the position that this submission gives us the necessary authority to limit the scope of the CRBR program as long as no legislation to the contrary is enacted.

Last summer, the Comptroller General considered this issue in connection with an Administration deferral on the CRBR. He concluded that the revised basis of arrangement did not constitute an adequate basis for limiting the CRBR program. OMB and DoE's legal counsel, with informal concurrence from the Justice Department, believe that the Comptroller's opinion is incorrect. They believe that we have a sound case in proceeding to terminate the project on the authority of the revised basis of arrangement. If we press this argument, however, the Congress will claim subversion of the Budget Control and Impoundment Act, and whether or not we are legally correct, the debate will be unpleasant.

This option is also not without risks of litigation. Further, it is difficult to explain since the arguments involved are fairly technical. It does, however, move the question of approval or disapproval of the authorization bill from the realm of the purely symbolic to a policy-justified decision. Wording of the veto message on this point would be crucial since an articulation of our legal strategy could encourage the Congress to try to attach a prohibition on termination to the language of the Supplemental. On the other hand, the message would have to make a clear enough policy case that we avoid the perception of a symbolic veto. Such a perception would, we believe, increase the risks of override. We believe that this kind of message can be drafted, however.

If this option is selected, the ERDA authorization would be sent to the Senate for first action on reconsideration. While we believe that we would have the votes to sustain this veto in the Senate, advance discussions to the Majority Leader and to Senator Bumpers, who lead the fight against the CRBR, would provide us with a better feeling on our chances here. It is possible that no attempt to override would be made.

This option avoids having to fight the B-1 decision over again and avoids at least part of the difficulty which would result from a veto of the supplemental and consideration of this action at the same time the National Energy Plan Conference reports are being considered. While complicated, we believe this could be explained as consistent with our non-proliferation policy to our allies abroad and to domestic supporters.

Moreover, there are other undesirable features of the Authorization bill which merit a veto, namely:

- a severe restriction of use of funds for the purchase or return of foreign spent fuel which could undermine your policy just announced in October. This provision also contains a one-House veto;
- two other one-House veto provisions dealing with geothermal facility loan guarantees over \$50 million and with regulations on fees charged for uranium enrichment;
- limitation on the Energy Secretary's flexibility to organize DOE, a provision in direct contradiction to the Department of Energy Organization Act;
- a requirement that recommendations be made for purchase and/or operation of the Barnwell facility within 6 months, which engages an issue which we seek to avoid and goes contrary to our agreement with Senator Hollings on the Barnwell compromise;
- numerous requirements and restrictions on energy research and development programs -- judgments which are more properly made by DOE;
- authorizations in excess of Administration requests for community impact assistance and other R & D programs.

Finally, this option bears on the credibility of your veto threat. We have notified the Speaker and others of our displeasure with the Authorization bill -- on both CRBR and other grounds. It can be argued that signing the authorization

which runs contrary to your policies in so many areas, would be taken as a sign that the Administration is prepared to give up a lot in the National Energy Plan. Your statements to consumer groups and others that you would veto bad national energy legislation are a considerable source of strength in the Energy Conference; approval of the authorization bill could undermine that strength, although Frank Moore disagrees with this analysis.

The risk of a veto override, after you sign the supplemental, is the main concern in this option. It could be argued that the Administration is not playing fair in relying on actions outside the normal Congressional and Executive passage/veto/reconsideration scheme. However, it seems likely that our supporters on the CRBR would back us up in this action.

4. Veto the Authorization, sign the Supplemental, fund the CRBR and pledge to fight again next year.

This option is similar to number three except no action is taken to try to terminate the CRBR this year. The veto, at least with respect to the CRBR, is symbolic, although the justification for the veto could also rest on your objections to other sections of the authorization bill. It has the advantage of avoiding implicit approval of the CRBR directive, and it also preserves some marginal program flexibility in using the \$80 million. (The principal area of flexibility is to permit planning for termination and to release the Administration from the obligation to press for licensing of the CRBR before the Nuclear Regulatory Commission. It may also permit a slightly slower expenditure of funds for the program.)

In all likelihood, this symbolic veto would anger the Speaker more than the other veto options, which at least have practical effects. It would not help us with all of our CRBR supporters, some of whom would criticize it as ineffective. Some of our Congressional friends have characterized this option as the worst of all possible worlds. It also gives rise to charges of "all style, no substance." Three or four of the Congressmen we called, however, suggested this option.

Citing the other undesirable features of the bill as additional reasons for the veto may help some with the symbolism charge, but there is not much sympathy on the Hill for our position on one-House vetoes. The risks of override under this option are, we believe, greater than they are under option 3.

RECOMMENDATIONS

When OMB collected recommendations from the relevant agencies, these four options had not been clearly delineated. Several of the agencies, it appears, focused only on the question of the authorization, not understanding the nature of its relation to the supplemental. With this caveat on agency recommendations, all views are summarized here:

State:	"Prepared to recommend" veto of both the Supplemental and the Authorization if we are "highly confident" that vetoes will be sustained. If a veto override is a serious risk, recommend letting the Authorization become law without signature.
ACDA:	Veto the Authorization (no comment on the Supplemental).
CEQ:	Veto the Authorization (no comment on the Supplemental).
Justice:	Defers to DOE, but included comments on one-House vetoes for possible inclusion in veto message or signing statement.
OMB:	Veto the Authorization, sign the Supplemental if enacted as currently drafted, pursue all options to terminate CRBR.
Other Agencies:	Deferred to DOE, but some expressed minor reservations about non-CRBR sections of the Authorization bill.
Department of Energy:	Veto the Authorization, sign the Supplemental, pursue all options to terminate the CRBR, unless further political analysis shows undue confrontation with Congress.
Lipshutz:	"Concur with OMB recommendation for veto because of CRBR authorization and Congressional veto provisions."
NSC:	Veto the Authorization (if it can be sustained), sign the Supplemental and continue to fight the CRBR this year.

Moore: Approve both bills (see attached memo).

Eizenstat: Veto the Authorization, sign the Supplemental, and pursue all options to fight the CRBR this year.

DISPOSITION

_____ Sign both bills

_____ Veto both bills

_____ Veto the Authorization, sign the Supplemental and pursue action to terminate CRBR this year

_____ Veto the Authorization, sign the Supplemental, fund CRBR, and fight next year.

_____ Other

THE WHITE HOUSE

WASHINGTON

November 1, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: FRANK MOORE

SUBJECT: Comments on Enrolled Bill S. 1811 - DoE Authorization Act of 1978 -- Civilian Applications

My staff and I believe the comments on the enrolled bill memorandum do not cover all of the issues raised by the enrolled bill itself. The ERDA non-military authorization (including the Clinch River Breeder Reactor) is closely tied in the House Leadership's minds to the Supplemental Appropriations bill, which carries money for research and development on the Clinch River project (\$80 million). As others have suggested, there may be reasons to veto the bill other than Clinch River; however, we believe it will be hard to convince people on the Hill that you did not veto it as merely a symbolic act, a veto for veto's sake. The Speaker is obsessed with making it through this year without a veto, so that he--and we--can say the Democrats are working together, that "government by veto" was ended with your election.

In addition, the fact is that we cannot win on the Clinch River project this year, veto or no veto. We have lost on every front: every sub-committee vote, every full committee vote, and every floor vote in the House and Senate. Vetoing this bill will not stop the money flowing to the Clinch River project. However, an argument can be made that we are wearing down CRBR proponents by attrition, and have a chance to win in the next regular budget cycle.

If we decide to veto, and if we are successful in convincing Congress that our reasons for doing so were the long list suggested in the OMB memorandum, then we would lose whatever leverage we would have in trying to sustain the veto on the basis of Clinch River. In effect, we cannot have it both ways. Furthermore, it should be noted that the bill passed both Houses by voice vote, which shows significant support for the bill once the Breeder is removed from the discussion. An override of a veto on S. 1811, therefore, is a very real possibility.

The Supplemental Appropriations bill was amended, removing the words "subject to the authorization" of the Clinch River project, thus the bottom line is that a veto of the ERDA non-military authorization bill, for the purpose

FRANK MOORE COMMENTS

of stopping the Clinch River project, would be only a symbolic one since appropriated monies would not need the authorization bill in order to be spent. It should be kept in mind, as well, that the Supplemental Appropriations conference report will in all likelihood contain language rescinding the already appropriated funds to build prototypes 5 and 6 of the B-1 bomber. If we are successful, you will be faced with a second enrolled bill memorandum (on the Supplemental Appropriations bill) which will contain funding for the Clinch River Breeder Reactor, and the rescission of the 1/2 billion dollars for the two additional B-1 aircraft.

Your decisions on this bill and the appropriations bill are very closely tied together. If we achieve our final victory on B-1 this legislative year, you will have to sign the Supplemental Appropriations in order to gain that victory and that same bill would be appropriating \$80 million for the Clinch River Breeder Reactor (for research and development). If you veto S. 1811 (the authorization bill) and sign the Supplemental Appropriations bill later, your actions will be contradictory. A consequence of which will be that you will have lost the political advantage of not having vetoed a bill in your first year, yet you will have gained absolutely nothing with regard to the Clinch River project.

We can get credit with the supporters of your position on Clinch River in the House by signing the bill and issuing a strong statement saying that you intend to continue to use every power at your command to prevent construction of the Clinch River project (including deferrals and rescissions).

cc: Stu Eizenstat

TO THE SENATE:

I am returning, without my approval, S. 1811, the "Department of Energy Authorization Act of 1978 -- Civilian Applications."

S. 1811 would authorize fiscal year 1978 appropriations for the Department of Energy's nuclear and non-nuclear energy research, development, and demonstration projects. Generally, the bill's scope covers fossil, solar, and nuclear energy research and development, and conservation, environmental and safety research.

We all know that advanced nuclear technologies using separated plutonium as a fuel can entail significant risk of nuclear weapons proliferation. In this regard, I strongly hold the view that the United States should develop advanced nuclear technologies that minimize the risk of nuclear proliferation.

S. 1811 would authorize funds for and require continuation of the fast breeder reactor demonstration plant project at Clinch River, Tennessee. The continuation of this project is not consistent with my Administration's National Energy Plan, and with my announcement of April 20, 1977, that we should not move towards commercialization of breeder reactors. The project is premature and uneconomic. Continuation of the project would represent an unnecessary commitment for expenditures in excess of \$1.4 billion.

A second problem is that this bill would restrict U.S. actions designed to support increased international storage capacity for foreign spent fuel. The bill would also make it unnecessarily difficult for the United States to provide for the return of spent fuel from foreign reactors when such action would serve our non-proliferation goals.

In addition to the foregoing objections, I note that Sections 108, 501 and 608 of the bill each would allow a single House of Congress to bar Executive action authorized by law simply by adopting a resolution of disapproval. Section 108 would also allow the Congress to thwart proposed Executive action unless such action were expressly authorized by a concurrent resolution. Such provisions raise major constitutional questions, since Article I, Section 7 of the Constitution requires that congressional action having the force and effect of law be presented to the President for approval. These provisions also have the potential of involving Congress in the execution of the laws, a responsibility reserved to the President under the Constitution.

Finally, S. 1811 would authorize a number of undesirable programs or unduly impinge on the prerogatives of the Department of Energy as noted below:

- Community impact assistance would be newly authorized or expanded respectively for (1) geothermal development and alternative fuels demonstration activities and (2) existing special assistance programs for specific communities. Substantial Federal community impact assistance is already available and there has been no demonstrated need to further expand the scope of such programs.
- Various energy R&D programs would be established, expanded, and/or accelerated at a time

when program considerations do not justify such action and the budget impacts of these would be extremely large. This includes restrictive provisions on the agreed upon solvent refined coal plant, duplicative small gasifiers, a high BTU coal gasification test facility, solar photovoltaics development, municipal waste reprocessing, and automobile research and development. These congressional expansions to existing energy R&D programs and the detailed technical directions in some of these will be extremely costly to the taxpayers and may diffuse and retard our critical energy research and development efforts.

- A significant number of detailed and burdensome reports to the Congress would be required. In some cases, Executive action would be delayed pending congressional review of the report. In the aggregate these would unnecessarily constrain Executive action and further add to the already vast reporting requirements that the Congress requires of the Executive departments and agencies.
- The Secretary's authority to organize the research and development activities of his Department would be severely limited thus undermining some of the positive changes that were recently achieved when the Department was established.

In sum, I view S. 1811 as unacceptably compromising several major policies of my Administration, and accordingly, the only action I can take in good conscience is to veto this legislation.

THE WHITE HOUSE
November , 1977

THE WHITE HOUSE
WASHINGTON

November 5, 1977

To Senator

It has been four months since we negotiated an agreement on the new Panama Canal treaties. At that time I wrote to you stating my belief that these treaties are fair and equitable, and essential to assure the continued effective use of the canal for American commercial and security needs.

I am writing again to reaffirm that position and to pledge my full effort to convince the American people that the agreement serves the best interests of the United States. A recent nationwide poll by CBS-*New York Times* indicates that Americans will support the treaties when they understand that

THE WHITE HOUSE

WASHINGTON

our country has the right to defend the canal. By a margin of more than 2:1 (63% to 24%) Americans say they would support the treaties if -- the treaties provided that the United States could always send in troops to keep the canal open to ships of all nations." As you know, the Treaty of Neutrality and the recent Statement of Understanding provide the United States this right.

It is essential, therefore, that the American people be given a full, factual explanation of the new treaties. I, with members of my Administration and many distinguished Americans, will undertake this task in the coming months. I urge you to support the treaties and to help in keeping

THE WHITE HOUSE
WASHINGTON

the facts before the public so
that this education process can
go forward as you approach
a final decision in the Senate.

I ask this of you in what
I truly believe to be our highest
national interest. I need your
help.

Sincerely,

Jimmy Carter

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for Preservation Purposes